

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JUSTIN DUFOE, on Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

DRAFTKINGS INC., JASON D. ROBINS,
JASON K. PARK, and MATTHEW KALISH,

Defendants.

Case No. 23-cv-10524-DJC

CLASS ACTION

Honorable Denise J. Casper

JOINT STATEMENT REGARDING PROPOSED SCHEDULING ORDER

Plaintiff Justin Dufoe (“Lead Plaintiff”) and defendants DraftKings Inc., Jason D. Robins, Jason K. Park, and Matthew Kalish (collectively, “Defendants”), through counsel, and pursuant to Fed. R. Civ. Proc. 26(f), Local Rule 16.1, and this Court’s Notice of Scheduling Conference (ECF 61), respectfully submit this Joint Statement Regarding Proposed Scheduling Order.

I. STATEMENT OF THE PARTIES AS TO LIABILITY AND RELIEF SOUGHT

A. **Background:** Lead Plaintiff filed the complaint on March 9, 2023. ECF 1. On June 6, 2023, the Court appointed Mr. Dufoe as Lead Plaintiff and his counsel as Lead and Liaison Counsel. ECF 32. On August 4, 2023, Lead Plaintiff filed the operative amended complaint. ECF 38 (“Complaint”). On September 25, 2023, Defendants moved to dismiss the Complaint (ECF 46-48), which, after briefing, was argued before the Court on December 19, 2023. ECF 55-57. On July 2, 2024, the Court denied Defendants’ motion to dismiss. ECF 60.

B. **Nature of the Action:** Lead Plaintiff alleges the following federal and state securities law violations: (1) the non-fungible tokens (“NFTs”) marketed and sold by Defendants are unregistered securities (Causes One and Seven); (2) Defendants have operated an unregistered securities exchange (Cause Three); (3) DraftKings has acted as an unregistered broker-dealer

(Causes Four and Six); and (4) defendants Robins, Park, and Kalish are liable as control persons for DraftKings alleged violations (Causes Two and Five). Lead Plaintiff seeks, on behalf of himself and a putative class of allegedly similarly situated investors rescission, damages arising from transactions on the alleged unregistered exchange, costs, attorneys' fees, interest, and any other relief that the Court deems appropriate. Defendants deny these allegations and any liability to Plaintiff or the putative class.

II. DISCOVERY LIMITATIONS

Based on the information presently available, the parties do not anticipate changes to the discovery limitations under the Federal Rules of Civil Procedure or the Local Rules for the District of Massachusetts. If information becomes available to either party requiring the need for additional discovery beyond what is provided for under the Rules, the parties will meet and confer before proposing any changes to the Court.

III. PROPOSED SCHEDULE AND DISCOVERY PLAN

The parties have met and conferred in good faith and propose the schedule set forth on the next page.

Event	Deadline
Defendants' answer to the amended complaint to be filed	Aug. 15, 2024
Protective Order and Production and ESI Agreement to be filed ¹	Sept. 6, 2024
Fed. R. Civ. P. 26(a)(1) initial disclosures to be served	Sept. 16, 2024
Plaintiff's class certification motion & supporting expert disclosures due	Dec. 20, 2024
Deadline to depose Plaintiff's class certification expert(s) ²	Jan. 24, 2025
Deadline to seek leave to amend pleadings or add parties	Feb. 7, 2025
Substantial completion of document productions ³	Feb. 7, 2025
Defendants class certification response and supporting expert disclosures due	Feb. 7, 2025
Deadline to depose Defendants' class certification response expert(s)	Mar. 7, 2025
Plaintiff's class certification reply & reply expert disclosures due	Mar. 21, 2025
Substantial completion of all fact discovery ⁴	Aug. 1, 2025
Deadline to disclose remaining experts and serve expert reports (non-class certification issues)	Sept. 26, 2025
Deadline to disclose rebuttal experts and serve expert reports (non-class certification issues)	Nov. 7, 2025
Deadline to serve supplemental Fed. R. Civ. P. 26(a)(1) disclosures	Nov. 14, 2025
All discovery closed	Apr. 13, 2026
Dispositive motions due	Apr. 20, 2026
Dispositive motion responses due	May 22, 2026
Dispositive motion replies due	Jun. 22, 2026
Joint Pretrial Memorandum	TBD
Pretrial Conference	TBD
Trial	TBD

¹ Under the PSLRA, discovery was stayed in this matter pending ruling on the motion to dismiss.

² The parties shall work cooperatively on expert deposition scheduling to ensure that all briefing and other deadlines may be met.

³ The parties agree to respond to written and oral discovery requests in a timely fashion to allow for the orderly completion of litigation events occurring before the deadlines for substantial completion of document production (February 7, 2025) and substantial completion of all fact discovery (August 1, 2025).

⁴ See n.3.

IV. PHASED DISCOVERY

The parties agree that phased or bifurcated discovery is unnecessary for the efficient and proportional management of discovery given the limitations and schedule proposed above. The parties will endeavor to provide any discovery necessary for class certification commensurate with the schedule above.

V. PRODUCTION OF ELECTRONICALLY STORED INFORMATION

The parties will meet and confer on the exchange of discoverable information stored in electronic format pursuant to Fed. R. Civ. P. 26(b)(2)(B). The parties will submit a Protective Order and Joint Protocol for the Production of Documents and Electronically Stored Information (“Protective Order and Production and ESI Agreement”) to the Court upon completion.

VI. CLAIMS OF PRIVILEGE OR WORK PRODUCT PROTECTION

The parties agree that privilege logs describing the documents withheld from production on the grounds of the attorney-client privilege, work product doctrine, or any other applicable privilege or protection shall be produced.

VII. SETTLEMENT OFFER

Lead Plaintiff’s counsel is gathering necessary information and will make a written settlement proposal pursuant to Local Rule 16.1(c) as soon as possible.

VIII. CONSENT TO TRIAL BY MAGISTRATE

The parties do not consent to trial before a United States Magistrate Judge.

IX. LOCAL RULE 16.1(d)(3) CERTIFICATIONS

Plaintiff’s and Defendants’ certifications of compliance with Local Rule 16.1(d) will be filed separately.

X. ALTERNATIVE DISPUTE RESOLUTION

The parties are conferring on a process for private mediation to run concurrently with the litigation schedule.

Dated: July 22, 2024

Respectfully Submitted,

BERMAN TABACCO

/s/ Patrick T. Egan

Patrick T. Egan (BBO #637477)

Justin N. Saif (BBO #660679)

1 Liberty Square

Boston, Massachusetts 02109

617.542.8300

pegan@bermantabacco.com

jsaif@bermantabacco.com

Local Counsel for Lead Plaintiff Dufoe

KIRBY McINERNEY LLP

/s/ Anthony F. Fata

Anthony F. Fata (admitted *pro hac vice*)

Kirby McInerney LLP

211 West Wacker Drive, Suite 550

Chicago, Illinois 60606

312.767.5180

afata@kmlp.com

Sarah E. Flohr (admitted *pro hac vice*)

Faisal Q. Haider (admitted *pro hac vice*)

Kirby McInerney LLP

250 Park Avenue, Suite 820

New York City, New York

212.371.6600

sflohr@kmlp.com

fhaider@kmlp.com

Lead Counsel for Lead Plaintiff Dufoe

Respectfully Submitted,

WILMER CUTLER PICKERING

HALE AND DORR LLP

/s/ Michael G. Bongiorno

Michael G. Bongiorno (BBO #558748)

Andrew S. Dulberg (BBO #675405)

60 State Street

Boston, MA 02109

michael.bongiorno@wilmerhale.com

andrew.dulberg@wilmerhale.com

Tel: (617) 526-6000

SULLIVAN & CROMWELL LLP

/s/ Brian T. Frawley

Brian T. Frawley (admitted *pro hac vice*)

Benjamin R. Walker (admitted *pro hac vice*)

Charles H. Sullivan (admitted *pro hac vice*)

Howard H. Kim (admitted *pro hac vice*)

125 Broad Street

New York, NY 10004

frawleyb@sullcrom.com

walkerb@sullcrom.com

sullivanc@sullcrom.com

kimhow@sullcrom.com

Tel: (212) 558-4000

Counsel for Defendants DraftKings Inc.,

Jason D. Robins, Jason K. Park, and

Matthew Kalish

HANNAFAN & HANNAFAN, LTD.

Blake T. Hannafan (admitted *pro hac vice*)

Hannafan & Hannafan, Ltd.

161 North Clark Street, Suite 1700

Chicago, Illinois 60601

312.527.0055

bth@hannafanlaw.com

G. DOWD LAW LLC

George Dowd (admitted *pro hac vice*)

161 North Clark Street, 16th Floor

Chicago, IL 60601

312.854.8300

George.dowd@gdowdlaw.com

Additional Counsel for Lead Plaintiff Dufoe

CERTIFICATE OF SERVICE

I hereby certify that these documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filings (NEF).

Dated: July 22, 2024

/s/ Anthony F. Fata

Anthony F. Fata